

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED  
CENTRAL FAX CENTER

NOV 09 2004

JONATHAN N. HOWARTH )

APPLN. NO.: 10/029,329 )

) GROUP ART UNIT: 1761

FILED: DECEMBER 21, 2001 )

) EXAMINER: CAROLYN A. PADEN

MICROBIOLOGICAL CONTROL  
IN POULTRY PROCESSING )DISCLOSURE

Pursuant to Applicant's obligations under 37 C.F.R. § 1.56, Applicant wishes to make the Examiner aware of the origin of the subject matter claimed in the pending application. As discussed in the instant specification, the use of chlorine-based microbiocides to attempt to provide suitable sanitation in poultry processing was known as of Applicant's filing date. However, the use of these biocides suffered from a number of drawbacks. *See, e.g.,* Background of the Invention at p.2.

In February of 2000, Applicant was employed by Albemarle, the assignee of the instant application. At that time, Dr. James McNaughton ("McNaughton"), an individual unaffiliated with Albemarle, and a colleague of his came to Albemarle for a meeting. Applicant and a number of his co-workers attended on behalf of Albemarle. During the meeting, the attendees discussed using Aquatize, a chlorine-containing biocide being promoted by McNaughton, in water treatment applications.

At some point in the meeting, the conversation turned to other applications for Aquatize. McNaughton stated that he used Aquatize in the treatment of poultry. The use of chlorine-based biocides in these treatments was well-known in the art as of the date of this meeting. In response

to McNaughton's comment, Applicant recommended the use of a bromine-containing biocide in these treatments.

Subsequent to this meeting, Applicant sent a sample of a bromine-containing biocide (Albemarle's S-909 product) to McNaughton for testing. Applicant suggested the dosage ranges to be used in these tests. Applicant subsequently suggested the use of other bromine-containing biocides in the treatment of poultry and sent samples to McNaughton for testing. These included: (1) the combination of sodium bromide (Albemarle's Sanibrom 40 product) and bleach; and (2) dibromodimethylhydantoin, Albemarle's S-1021 product. In each instance, Applicant suggested the dosage ranges used in these tests.

McNaughton met with Albemarle employees again on July 25, 2000. At this meeting, an Albemarle employee who was not present during the initial meetings and contacts between Applicant and McNaughton joined the team that worked on the poultry treatment project. During the subsequent months, this employee authored a number of documents that overstated McNaughton's contribution to the idea of using bromine-containing biocides in the treatment of poultry. These documents in some instances attributed inventorship status to McNaughton. However, the Albemarle employee at issue is not a lawyer, is not familiar with the law of inventorship, and was not aware of all the facts at the time the documents were authored.

Independent, outside counsel and in-house counsel thoroughly investigated the true origin of the idea for using bromine-containing biocides in poultry treatment applications and have determined that such idea originated with Applicant. McNaughton's testing activities were for the purpose of trying Applicant's idea out and were known in the prior art and, therefore, McNaughton is not properly a co-inventor of the claimed subject matter. *Hess v. Advanced*

*Cardiovascular Sys.*, 106 F.3d 976, 981-82 (Fed. Cir. 1997), *cert. denied*, 520 U.S. 1277 (1997) (explaining state of the art does not amount to co-inventorship).

The undersigned and the Examiner discussed this disclosure via telephone on November 8, 2004. The Examiner informed the undersigned that this disclosure would be considered in connection with an Information Disclosure Statement Applicant recently submitted.

Applicant stands ready to provide additional information and documents if requested by the Examiner.

Dated: *November 9, 2004*

Respectfully submitted,

By   
Gerard M. O'Rourke, Esquire

Registration No. 39,794  
CONNOLLY BOVE LODGE & HUTZ, LLP  
P.O. Box 2207  
1007 North Orange Street  
Wilmington, DE 19899  
(302) 658-9141  
(302) 658-5614 (fax)

365829\_1